IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.616 of 2007
JITENDRA KUMAR @ JITENDRA PRASAD
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Surendra Kumar Singh, Adv.
: Mr. Ganesh Prasad, Adv.
For the opposite party : Mr. Raj Kumar, Adv.,
For the State : Mr. Gopesh Kumar, App.

4. 9.9.2008. Heard learned counsel for the petitioner as well as the opposite party and perused the record including the impugned order.

On perusal of the impugned order it appears that vide order dated 11.5.2005 Family Court, Patna passed an ex parte order with regard to payment of maintenance to opposite party no. 2. Against that very order, the petitioner filed petition for setting aside the ex parte order under Section 126(ii) of the Cr.P.C. on the ground that no service was ever served upon the petitioner and on the date of service of summon the petitioner was in jail custody. However, court below refused to set aside the ex parte order vide its order dated 21.9.2006.

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The submission of learned counsel for the petitioner is that no personal service was ever affected upon the petitioner and on that very time he was in jail custody. Service was affected Bala-Bala in collusion with the opposite party. If the ex-parte order is not

recalled, the petitioner will suffer irreparable loss.

On perusal of the impugned order, it is quite apparent that no personal service was affected upon the petitioner. Service was affected Bala-Bala. Court below has not considered this fact properly and refused to recall ex-parte order.

Under the facts and circumstances, I am of the view that an opportunity should be given to the petitioner to contest the case on merit. Accordingly, this application is allowed. Impugned order as well as ex-parte order dated 11.5.2005 are hereby set aside. Court below shall give an opportunity to the petitioner to file his show-cause and thereafter proceed to make enquiry in accordance with law. In any event, the case must be disposed of within a period of five months from the date of receipt of this order.

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kanchan **(Ghanshyam Prasad, J.)**